REMARKS

Claims 15-41 are pending in the present application. Reexamination of the application and reconsideration of the rejections and objections are respectfully requested in view of the above amendments and the following remarks, which follow the order set forth in the Office Action.

Rejections under 35 U.S.C. § 103 Over Muller and Buntain

The Office Action rejected claims 15-17, 20, and 22-40 under 35 U.S.C. §103(a) for being obvious over U.S. Patent No. 5,869,517 ("Muller") and EP 0295117 ("Buntain"). Applicants respectfully traverse the rejection in view of the following remarks, as well as those presented in the previous Amendment of September 14, 2010.

Applicants respectfully submit that *Muller* and *Buntain* do not provide a teaching, suggestion, or a reason to choose three of the 101 compounds specifically disclosed in *Buntain* to combine with the compounds disclosed in *Muller* to arrive at a composition that might fall within the subject matter of claim 15.

Claim 15 of the present application is directed to a mixture for crop protection, comprising a carbamate derivative of formula I and at least one compound of formula II.

The Office states that *Muller* discloses numerous compounds that are species of formula I, as recited in claim 15. *See*, Table 5 and Table A. *Muller* also discloses further crop protection agents that include at least 77 fungicides. *See*, c. 34, l. 49 – c. 36, l. 2. Applicants submit that none of these further crop protection agents has a structural relationship with the instantly claimed compounds of formula II. The Office also states that *Buntain* discloses compounds 52, 57, 58, and 59 as those of the instant formula II. In response, Applicants respectfully submit that compound 59, with a 3-bromo group, is not of the instant formula II, which has a 3-cyano group. Accordingly, Buntain may only disclose three compounds that are of formula II.

Although an obvious to try rationale may, on specific circumstances, support choosing a particular combination for a particular purpose, the selection of the particular combination must be made from a finite number of solutions. Under *KSR*, "[w]hen there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options

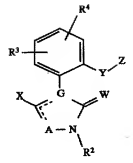
within his or her technical grasp." *KSR International Co. v. Teleflex Inc.* , 82 USPQ2d 1385, 1390 (2007). Emphasis added. A post-*KSR* Federal Circuit case (*Ortho-McNeil Pharm. v. Mylan Labs*, USPQ2d 1196 (Fed. Cir. 2008)) partially addressed the issue of how large the "finite number" in KSR should be. According to the *Ortho-McNeil Pharm.* court,"[t]he passage above in KSR posits a situation with a finite, and in the context of the art, small or easily traversed, number of options that would convince an ordinarily skilled artisan of obviousness." *Id.* at 1201.

Applicants respectfully submit that the claimed subject matter is not obvious over the combination of *Muller* and *Buntain* because there is no reason provided in either reference to specifically choose compounds 52, 57, and 58 of *Buntain* to use in combination with any specific compounds of *Muller* that may fall within the scope of claim 15. Specifically, *Buntain* provides no suggestion to choose any one of compounds 52, 57, or 58 out of the approximately 100 compounds disclosed therein (*see*, p. 2, l. 47 – p. 4, l. 40) to combine with a compound disclosed in *Muller* to arrive at the claimed composition. Since neither *Muller* nor *Buntain* provide this reason and because the combinations are too numerous to amount to a finite number of identified, predictable solutions under *KSR* and *Ortho-McNeil Pharm.*, Applicants respectfully submit that claims 15-17, 20, and 22-40 are not obvious over the combination of *Muller* and *Buntain*. Accordingly, Applicants respectfully request withdrawal of the instant rejection.

Rejections under 35 U.S.C. § 103 over Muller and Buntain in view of Brown

The Office Action rejected claims 15-40 under 35 U.S.C. §103(a) for being obvious over *Muller* and *Buntain* in view of U.S. Patent No. 5,747,516 ("Brown"). Applicants respectfully traverse the rejection. Applicants respectfully traverse the rejection in view of the following remarks, as well as those presented in the previous Amendment of September 14, 2010.

As discussed above, claim 15 of the present application is directed to a mixture for crop protection, comprising a carbamate derivative of the formula I at least one compound of the formula II, which are insecticides. The teachings of *Muller* and *Buntain* are summarized above. *Brown* discloses dihydroisoxazoles, dihydroisothiazoles, dihydropyrazoles, dihydrothiazoles and dihydroimidazoles of formula:



which can be mixed with further pesticides. *Brown* compounds are to an entirely different class of pesticides. Unlike the compounds of the present application, the *Brown* heterocycle does not contain an N-N group in which one of the two N atoms is directly bonded to the phenyl ring. In addition, the substitution pattern of the phenyl ring is completely different in *Brown*. As such, *Brown's* compounds are not structurally related to compounds of formula I or II as recited in the claims of the present application.

Further, while *Brown* discloses over 100 compounds (*see*, col. 60, line 37 to col. 61, line 11) that can be mixed with an additional 1,800 compounds disclosed throughout *Brown* to yield 180,000 possible mixtures, Applicants submit that none of these compounds are encompassed by the claims of the present application because they are structurally unrelated to compounds of formula I or II. As such, *Brown* does not cure the defect in *Muller* and *Buntain* because *Brown* provides no teaching, suggestion, or reason to choose compounds within the scope of claim 15. As such, claims 15-40 are not obvious over *Muller* and *Buntain* in view of *Brown*. Accordingly, Applicants respectfully request withdrawal of the rejection.

Obviousness-Type Double Patenting Rejection

The Office Action provisionally rejected claims 15-18, 22, 23, 26, 29, 32, 35, and 38 on the grounds of nonstatutory obviousness-type double patenting over the claims of U.S. Patent Application No. 12/524,137. Applicants respectfully request that the rejection be withdrawn in this application, which is the first-filed application, and applied towards U.S. 12/524,137, if appropriate.

For the foregoing reasons, claims 15-41 are considered allowable. A Notice to this effect is respectfully requested. If any questions remain, the Examiner is invited to contact the undersigned at the number given below.

The Director is hereby authorized to charge any appropriate fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

BRINKS HOFER GILSON & LIONE

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